REMARKS

Claim 33 has been canceled. Claims 1-32 and 34 are now pending in the application. Applicant amends claims 1-3, 6, 8-13, 15-19, 21-25, 27-29, and 31-32, and 34 for further clarification. No new matter has been added.

The Examiner objected to claims 1-3, 10, 17-18, 24-25, and 28-30 for apparent informalities. Applicant amends claims 10, 24-25, and 28-29 in accordance with the Examiner's suggestions. Applicant respectfully submits that claim 30 properly recites a first instance of "an indication of the selected base station." Accordingly, Applicant respectfully requests that the Examiner withdraw the objections.

Claims 1-3, 11, 15, 17-18, 21, 24-25, 27, 31-32, and 34 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention.

Applicant amends claims 1-3, 11, 15, 17-18, 21, 27, 31, and 34 in accordance with the Examiner's suggestions, and respectfully requests that the Examiner withdraw the § 112 rejections.

Claims 1-7, 9, 11-21, 23-32, and 34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0083069 to Vadgama in view of U.S. Patent Application Publication No. 2002/0093953 to Naim et al.; claims 8 and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Vadgama in view of Naim et al., and further in view of U.S. Patent Application No. 2002/0080719 to Parkvall et al.; and claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Vadgama in view of Naim et al., and further in view of U.S. Patent Application No. 2002/0048258 to Oyama. Applicant respectfully traverses the rejections.

The Examiner relied upon Vadgama as the principal reference that allegedly discloses the claimed active station selection features by describing "congestion based selection." The Examiner conceded that Vadgama does not suggest the claimed data amount determination and comparison features, and relied upon Naim et al. as a combining reference that allegedly suggests these features.

Vadgama, as cited and relied upon by the Examiner, describe a cell selection technique based on a measured congestion level of a cell, whereas Naim et al. describe a resource allocation technique for a particular base station 12. Therefore, absent improper hindsight from the claimed invention itself, the references would have, at most, suggested using a measured congestion level to select a particular cell, as described in Vadgama, and thereafter allocate resources of a base station servicing the selected cell based on criteria on respective mobile stations that are being serviced by the base station, as described in Naim et al.

The Examiner cited paragraph [0009] of Naim et al. and paragraphs [0086]-[0087] of Vadgama as alleged suggestion for the proposed combination of these references. Page 5, lines 7-12 of the Office Action. But paragraph [0009] of Naim et al. only includes description of ineffective resource allocation of a particular base station, such as using dedicated channel assignment, causing mobile stations with high traffic to suffer packet delays/loss (or "congestion"). Such portions do not include any disclosure or even suggestion of cell congestion or handovers:

> "Each base station may have only a limited number of channels to make these connections...In order to fairly allocate the resources available, it is necessary for the base station to make some judgment as to which mobile stations can utilize the channels, and for how long." Paragraph [0004] of Naim et al.

Correspondingly, paragraphs [0086]-[0087] merely include description of using a number of buffered packets as a measure of congestion levels, and using parameters other than the number of buffered packets as a measure of congestion levels.

Thus, while the cited references describe a relationship between a buffer level and congestion related to that buffer, Naim et al. only describe resource allocation of a particular base station to reduce "congestion" of mobile stations being serviced by the base station, whereas Vadgama describe a wholly separate technique of selecting a cell based on congestion of the cell. In other words, neither reference provides any motivation or suggestion, nor does one skilled in the art have any objective reason absent improper hindsight, to alter the disclosure of the cited references to perform cell selection, as described in Vadgama, based on relative buffer levels of mobile stations. The claimed invention was clearly used as a blueprint for piecing together the disparate features described in Vadgama and Naim et al. to meet the recited features.

Therefore, Applicant respectfully submits that the Examiner has failed to establish a prima facie case of obviousness in failing to provide the motivation, suggestion, or objective reason, absent improper hindsight from the claimed invention itself, to combine the cited references in the manner proposed to meet the features of the claimed invention.

And even assuming, arguendo, that it would have been obvious to one skilled in the art at the time the claimed invention was made to combine Vadgama and Naim et al., such a combination would still have failed to disclose or suggest,

> "[a] method of selecting an active base station for use during soft handover, the active base station being for receiving data from a plurality of user equipments, the method comprising:
> determining an amount of data in a data buffer of each of the user equipments;
> comparing the amounts of data in the data buffers of the user equipments to obtain a relative indicator, the relative

> indicator indicating how full one of the ***user equipments' data buffer*** is in comparison to the data buffers of the ***other of the user equipments***; and
>
> ***selecting a base station*** as the active base station for the one user equipment ***based on the relative indicator***," as recited in claim 1. (Emphasis added)

Accordingly, Applicant respectfully submits that claim 1, together with claims 2-7, 9, and 11-16 dependent therefrom, is patentable over Vadgama and Naim et al., separately and in combination, for at least the above-stated reasons. Claims 23 and 34 incorporate features that correspond to those of claim 1 cited above, and are, therefore, together with claims 24-32 dependent from claim 23, patentable over the cited references for at least the same reasons.

Correspondingly, paragraph [0031] of Naim et al., as cited by the Examiner for allegedly suggesting the claimed data amount comparison feature, only includes description of a base station allocating resources. Thus, Naim et al., as cited and relied upon by the Examiner—and the proposed combination of references—fail to disclose or even suggest a base station ***transmitting*** a relative indicator indicating how full one of the user equipments' data buffer is in comparison to the data buffers of the other of the user equipments.

Thus, even assuming, arguendo, that it would have been obvious to one skilled in the art at the time the claimed invention was made to combine Vadgama and Naim et al., such a combination would still have failed to disclose or suggest,

> "[a] base station for receiving data from a plurality of user equipments, the base station comprising:
>
> a determining unit which determines an amount of data in a data buffer of each of the user equipments;
>
> a comparing unit which compares the amount of data in the data buffers of the user equipments to obtain a relative indicator, the relative indicator indicating how full one of the user equipments' data buffer is in comparison to the data buffers of the other of the user equipments;
>
> a transmitting unit which transmits the relative indicator;

> a receiving unit which receives a signal indicating whether the base station has been selected as an active base station for the one user equipment; and
>
> an allocating unit which allocates a channel to the one user equipment if the base station has been selected as the active base station," as recited in claim 17. (Emphasis added)

Accordingly, Applicant respectfully submits that claim 17, together with claims 18-21 dependent therefrom, is patentable over Vadgama and Naim et al., separately and in combination, for at least the above-stated reasons.

The Examiner cited Parkvall et al. and Oyama as further combining references to specifically address the additional features of claims 8, 10, and 22, which depend from claims 1 and 17, respectively. As such, further combinations with these references would still have failed to cure the above-described deficiencies of Vadgama and Naim et al., even assuming, arguendo, that such further combinations would have been obvious to one skilled in the art at the time the claimed invention was made. Accordingly, Applicant respectfully submits that claims 8, 10, and 22 are patentable over the cited references for at least the above-stated reasons.

Claims 18-22 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 20-24 of copending Application No. 10/565,866; and claims 17-19 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 20-22 of copending Application No. 10/565,866 in view of Vadgama.

Applicant submits a terminal disclaimer from copending Application No. 10/565,866 to obviate the provisional double patenting rejections.

In view of the remarks set forth above, this application is in condition for allowance which action is respectfully requested. However, if for any reason the Examiner should consider this application not to be in condition for allowance, the Examiner is respectfully

requested to telephone the undersigned attorney at the number listed below prior to issuing a further Action.

Any fee due with this paper may be charged to Deposit Account No. 50-1290.

Respectfully submitted,

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